APPENDIX A — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED OCTOBER 29, 2003

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NO. 02-35248
CT/AG#: CV-01-00119-DWM

In re: DOUGLAS E. MILLER

BONNIE G. SNAVELY

Defendant - Appellant

v.

DOUGLAS MILLER

Debtor - Appellee

JUDGMENT

APPEAL FROM the United States District Court for the District of Montana (Missoula).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Montana (Missoula) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the APPEAL IS DISMISSED as moot.

Filed and entered October 29, 2003

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING PETITION FOR REHEARING FILED DECEMBER 3, 2003

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 02-35248

D.C. No. CV-01-00119-DWM
District of Montana, Missoula

In re: DOUGLAS E. MILLER,

BONNIE G. SNAVELY,

Defendant - Appellant,

v.

DOUGLAS MILLER,

Debtor - Appellee.

ORDER

Before: TROTT, FISHER, and GOULD, Circuit Judges.

Appellant's petition for rehearing filed November 19, 2003, is hereby DENIED.

FILED
MAY 2 - 2006
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SUPREME COURT, U.S.

No. 05-08

IN THE

Supreme Court of the United States

BONNIE G. SNAVELY,

Petitioner,

v.

DOUGLAS MILLER,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF OF PETITIONER BONNEY G. SNAVELY

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SUPPLEMENTAL BRIEF OF PETITIONER BONNIE G. SNAVELY

Pursuant to Rule 15.8 of the Rules of this Court, Petitioner Bonnie G. Snavely ("Snavely") submits this supplemental brief in light of this Court's decision in *Marshall* v. *Marshall*, No. 04-1544 (U.S. May 1, 2006). Given the Court's opinion clarifying the scope of the so-called "probate exception" to federal court jurisdiction in *Marshall*, the Court should grant, vacate, and remand this case to give the Ninth Circuit the opportunity to apply this Court's new precedent.

In *Marshall*, the Court held that the probate exception precludes federal court jurisdiction in three narrow circumstances: First, "'a federal court has no jurisdiction to probate a will.'" *Marshall*, No. 04-1544, slip op. at 13 (quoting *Markham* v. *Allen*, 326 U.S. 490, 494 (1946)). Second, "'a federal court has no jurisdiction to . . . administer an estate.'" *Id.* (quoting *Markham*, 326 U.S. at 494). Third, "'a federal court may not exercise its jurisdiction or affect the possession of property in the custody of a state court.'" *Id.* (quoting *Markham*, 326 U.S. at 494). In Ms. Snavely's case the federal bankruptcy court battled with a state court over the administration of the decedent's estate plan, taking control of testamentary assets that the state court was in the process of administering as part of an estate-related trust. Accordingly, this case fits squarely within the second and third of the *Marshall* categories, and "'sound policy considerations' militate in favor of extending the probate exception to cover" Ms. Snavely's case. See *id.* at 15.

Ms. Snavely's mother used a trust as her primary vehicle for distributing her property after her death. As is customary with both wills and trusts, the trust incorporated the grantor's last wishes for the care of her offspring. Ms. Snavely was the trustee of this trust, which was made irrevocable by the

operation of her mother's will upon her mother's death.[1] As required by Washington law, Wash. Rev. Code §11.100.140, Ms. Snavely filed an accounting in state court in order to receive judicial authorization for her administration and proposed distribution of the trust's assets. In the resulting state-court litigation against the Respondent, Ms. Snavely prevailed. See Pet. App. 95a-142a. After the state court announced its ruling on the trust accounting but before the state court could enter its written order, Respondent filed for bankruptcy and ultimately petitioned the federal court for an accounting to remove Ms. Snavely as trustee and compel the transfer of assets held by the trust to himself. See *id.* at 24a.

The state court, however, held that it retained control over "the accounting for the Trust and the sale of the property of the Trust." See Pet. App. 94a. Pointedly, however, the state court ceded jurisdiction over the *in personam* claims between Ms. Snavely and the Respondent to the federal court. See *id.* The federal court, however, ignored the state court's continuing *in rem* jurisdiction over the trust and proceeded to conduct a complete re-trial of the issues surrounding its administration. *Id.* at 30a-62a. The state court continued to protest that the federal court lacked jurisdiction over these testamentary matters until the federal court took the extraordinary step of enjoining the parties from having any further contact with the state court and its ongoing proceedings. At that point the state court entered its final order on the administration of the trust, which the federal court continued to ignore. See Pet. 4.

This Court has long held that the judicial accounting of an estate or trust is part of the "administration of the estate." See *Waterman* v. *Canal-Louisiana Bank & Trust Co.*, 215 U.S. 33, 45 (1909) ("the bill in this case goes too far in asking to have an accounting of the estate, such as can only be had in

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[1] Such trusts are a routine estate planning device. *See generally* John H. Longbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 Harv. L. Rev. 1108 (1984).

the probate court having jurisdiction of the matter"). Accordingly, the federal court in Ms. Snavely's case exceeded its jurisdiction under *Marshall* by wresting the accounting issues from the state court and carrying on what amounted to "the administration of the decedent's estate." See *Marshall*, No. 04-1544, slip op. at 14. Likewise, by taking control not only of the *in personam* matters over which the state court disclaimed jurisdiction, but also the trust *res*, over which the state court vigorously attempted to reserve jurisdiction, the federal court was "endeavoring to dispose of property that [was] in the custody of a state probate court." See *id.* at 15.

As noted above, in Ms. Snavely's case the federal court went so far as to issue sanctions and injunctions against proceeding in the state court with regard to the trust assets. Avoiding such an overt jurisdictional tug-of-war between state and federal courts is among the "'sound policy considerations'" that "militate in favor of extending the probate exception to cover the case at hand." See *id.*

For the foregoing reasons, Petitioner respectfully submits that the petition should be granted, the judgment of the court of appeals vacated, and the case remanded for further proceedings consistent with this Court's opinion in *Marshall*.

Respectfully submitted,

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